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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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BY:

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FALLBROOK UNION HIGH SCHOOL DISTRICT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY FACSIMILE

MARY STRUBLE, As Conservator for
CS,

Plaintiff,

v.

FALLBROOK UNION HIGH
SCHOOL DISTRICT, a Local
Educational Agency,

Defendant.

CASE NO. 07CV 2328 LAB (cab)

**FALLBROOK UNION HIGH
SCHOOL DISTRICT ANSWER TO
COMPLAINT/APEAL OF
ADMINISTRATIVE HEARINGS,
SPECIAL EDUCATION DIVISION,
FOR PARTIAL REVERSAL OF
DECISION AND ATTORNEY FEES
AND COSTS AND
COUNTERCLAIMS AGAINST
MARY STRUBLE**

FALLBROOK UNION HIGH
SCHOOL DISTRICT,

Counterclaimant,

v.

MARY STRUBLE,

Counterdefendant.

CP

COMES NOW Defendant and Counterclaimant FALLBROOK UNION HIGH SCHOOL DISTRICT ("District"), in answer to the Complaint/Appeal of Office of Administrative Hearings, Special Education Division, for Partial Reversal of Decision and Attorney Fees and Costs ("Complaint") of Plaintiff MARY STRUBLE ("Plaintiff"), as conservator for CS ("Student") in the above-referenced matter, and admits, denies, and alleges as follows:

I

DISTRICT'S ANSWER TO COMPLAINT

1. In answer to Paragraph 1 of the Complaint, the District admits that 20 U.S.C. § 1331 confers on this Court original jurisdiction in this matter because it arises under the Individuals with Disabilities Education Act ("IDEA"). See 20 U.S.C. § 1400 *et seq.*

The District denies that this matter arises under section 504 of the Rehabilitation Act or its codification at 29 U.S.C. § 794, or the Civil Rights Act or its codification at 42 U.S.C. § 1983, or that this Court has jurisdiction under these laws.

The District admits that Plaintiff's Complaint is an appeal for partial reversal of the decision of the Special Education Division of the California Office of Administrative Hearings ("OAH") in OAH case number N2007090067 dated November 20, 2007.

2. In answer to Paragraph 2 of the Complaint, the District denies that

jurisdiction is conferred on this Court by 28 U.S.C. § 1343.

3. In answer to Paragraph 3 of the Complaint, the District admits the Southern District of California is the proper venue for this matter pursuant to 28 U.S.C. § 1391(b) because Plaintiff and CS reside in the Southern District of California, the District is located in the Southern District of California, and a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of California.

4. In answer to Paragraph 4 of the Complaint, the District admits that Plaintiff has exhausted her administrative remedies under the laws of the IDEA by virtue of the special education due process hearing that was held before the OAH.

The District denies that Plaintiff has exhausted her administrative remedies under section 504 of the Rehabilitation Act or its codification at 29 U.S.C. § 794, or the Civil Rights Act or its codification at 42 U.S.C. § 1983.

The District admits that Educ. Code § 56505(k) is the California codification of Plaintiff's right under 20 U.S.C. § 1415(i)(1)(B)(2) to bring a civil action in the Court as an aggrieved party to the decision of the OAH.

The District denies that the decision of the OAH made errors of law in deciding questions of fact or law in favor of the District.

The District admits that that decision of the OAH made errors of law in deciding questions of fact or law in favor of the Plaintiff.

The District admits that Plaintiff requested a modification of the OAH

1 decision in her favor.

2 The District denies that Plaintiff is entitled to a modification of the OAH
3 decision in her favor.

4 The District alleges that the allegation pertaining to a modification of the OAH
5 decision is irrelevant.

6
7 5. In answer to Paragraph 5 of the Complaint, the District admits the
8 allegations in Paragraph 5 of the Complaint.

9
10 6. In answer to Paragraph 6 of the Complaint, the District admits the
11 allegations in Paragraph 6 of the Complaint.

12
13 7. In answer to Paragraph 7 of the Complaint, the District denies that those
14 portions of the OAH decision in favor of the District were in error.

15 The District alleges that the OAH decision partially in favor of the Plaintiff
16 was in error.

17
18 The District admits the remaining allegations n Paragraph 7 of the Complaint.

19
20 8. In answer to Paragraph 8 of the Complaint, the District alleges that the
21 allegation that the District had responsibility to discharge all duties imposed upon the
22 District by law is but a truism and a meaningless allegation.

23 The District admits the remaining allegations in Paragraph 8 of the Complaint.

24
25 9. In answer to Paragraph 9 of the Complaint, the District alleges that two of
26 the issues were whether the District failed to write any handwriting goals for the
27 2005-2006 and 2006-2007 school years.
28

1 The District admits that the remainder of the issues cited by Plaintiff is a fair
2 characterization of the issues heard at Student's special education due process
3 hearing and of the issues to be decided by this Court.

4
5 10. In answer to Paragraph 10 of the Complaint, the District denies the
6 allegations in Paragraph 10 of the Complaint.

7 The District alleges that Student's request for due process provided alleged
8 "Facts" that date back to the period of time when Student was five years old, during
9 which time options for completing high school were not an issue.

10
11 The District alleges that Student's request for due process first mentions any
12 issue with regard to a diploma-track program in an allegation that at a November 27,
13 2006 IEP team meeting, Student was not offered a high school diploma track.

14
15 The District alleges that Student's request for due process only proposed that
16 he be placed at a certified nonpublic school, with all services and transportation,
17 reimbursement for an independent educational evaluation, and any addition
18 educational expenses that Student's parents might incur during the pendency of his
19 due process proceeding.
20
21

22 The District alleges that Student did not request that the proposed nonpublic
23 school placement be in a program leading to a high school diploma.

24
25 11. In answer to Paragraph 11 of the Complaint, the District alleges that
26 Student's request for due process proposed as partial resolution of his request for a
27 due process hearing that he be placed at a certified nonpublic school.
28

1 The District further alleges that Student never requested a placement where he
2 could obtain a high school diploma.

3 12. In answer to Paragraph 12 of the Complaint, the District denies the
4 allegations in Paragraph 12 of the Complaint.
5

6 The District alleges that a nonfiling party to a special education due process
7 hearing may raise affirmative defenses as issues to be decided and that a nonfiling
8 party may request as relief that all requests for relief made by the filing party be
9 denied.
10

11 13. In answer to Paragraph 13 of the Complaint, the District alleges that the
12 allegations in Paragraph 13 of the Complaint are vague and ambiguous.
13

14 Nevertheless, the District denies what appears to be Plaintiff's implied
15 argument that a finding in her favor on one issue is sufficient basis for awarding her
16 the entirety of the relief that she and Student requested at Student's due process
17 hearing, let alone any part of the relief requested. *See Parents of Student W. v.*
18 *Puyallup School District No. 3*, 31 F.3d 1489, 1497 (9th Cir. 1994).
19
20

21 The District alleges that 20 U.S.C. § 1415(f)(3)(E)(ii) dictates how alleged
22 procedural violations are to be analyzed.
23

24 The District denies the remaining allegations in Paragraph 13 of the Complaint
25 to the extent that they are comprehensible.

26 The District denies the remaining allegations in Paragraph 13 of the Complaint
27 to the extent that they are not comprehensible.
28

1 14. In answer to Paragraph 14 of the Complaint, the District takes issue with
2 Plaintiff's gloss on the hearing officer's Conclusions of Law.

3 The District alleges that the hearing officer only found that the District denied
4 Student a free appropriate public education ("FAPE") based on a predetermined
5 placement at Student's June 2007 Individualized Education Plan ("IEP") team
6 meeting and at no other time.
7

8 The District denies that the hearing officer found that the District denied
9 Student a FAPE during the 2005-2006 and 2006-2007 school years by not
10 communicating to Student's parents options for completing high school. The District
11 admits that the hearing officer found that the District denied Student a FAPE during
12 the 2005-2006 and 2006-2007 school years by not adequately communicating
13 options for completing high school.
14

15 15. In answer to Paragraph 15 of the Complaint, the District denies the
16 allegations in Paragraph 15 of the Complaint.
17

18 The District denies that by winning a penny, Plaintiff is eligible for an award
19 of a pound.
20

21 The District alleges that Student decided what issues were to be decided at his
22 due process hearing. See Paragraph 12 of Plaintiff's Complaint.
23

24 The District alleges that Plaintiff mischaracterizes the law with regard to
25 awarding equitable relief and attorneys' fees under the IDEA.
26

27 16. In answer to Paragraph 16 of the Complaint, the District denies that
28

1 Student prevailed on the ultimate issue.

2 The District admits the remaining allegations in Paragraph 16 of the
3 Complaint.

4
5 17. In answer to Paragraph 17 of the Complaint, the District admits that
6 paragraph 31 of the hearing officer's Conclusions of Law provides in part, "Student
7 did not meet his burden of proving that an NPS placement should be ordered to
8 provide compensatory education to Student."
9

10 The District alleges that the hearing officer correctly determined that Student
11 did not meet his burden of proof that an NPS placement should be ordered to provide
12 compensatory education to Student.
13

14 The District alleges that the hearing officer found that the District's transition
15 program is not designed to give Student the opportunity to work toward a diploma.
16

17 The District alleges that the hearing officer found that allowing Student to
18 attend a District school as a "super senior" without intention of earning a high school
19 diploma was not appropriate.
20

21 The District admits that the hearing officer did not determine Student's
22 placement.
23

24 The District denies the remaining allegations in Paragraph 17 of the
25 Complaint.

26 18. In answer to Paragraph 18 of the Complaint, the District alleges that
27 Student bore the burden to prove the appropriate remedy.
28

1 The District alleges that Plaintiff and Student filed for a due process hearing in
2 order to be placed in a program of study that led to a high school diploma.

3 The District alleges that the hearing officer ordered that Student should be
4 placed in a program that will lead to a high school diploma.

5 The District alleges that the hearing officer fashioned Student's remedy.

6 The District alleges that the hearing officer's order and remedy is erroneous
7 because the hearing officer erred in her factual findings and conclusions of law.

8 The District alleges that the cases cited by Plaintiff are inapposite.

9 The District alleges that Plaintiff mischaracterizes the cases cited.

10 The District admits that paragraph 34 of the hearing officer's legal conclusions
11 provides in part:

12 "If the IEP team is unable to agree upon an appropriate placement, nothing in
13 this Decision would stop either party from seeking further relief through a
14 future due process proceeding."

15 The District admits that the remedy of compensatory education depends on a
16 fact-specific analysis of the individual circumstances of the case, and that a court is
17 given broad discretion in fashioning a remedy as long s the relief is appropriate in
18 light of the purpose of the IDEA.

19 The District denies the remaining allegations in Paragraph 18 of the
20 Complaint.

21 19. In answer to Paragraph 19 of the Complaint, the District has no

1 information, knowledge, or belief as to the truth of the allegation that Plaintiff filed
2 her Complaint rather than participate in a future IEP team meeting and become
3 subject to another administrative due process hearing, and so denies the allegation on
4 that ground.
5

6 The District alleges that Plaintiff admits in Paragraph 19 of the Complaint that
7 she refuses to participate in the IEP decisionmaking process and has predetermined
8 her decision with regard to any future offer of FAPE at an IEP team meeting.
9

10 The District admits the remaining allegations in Paragraph 19 of the
11 Complaint.
12

13 20. In answer to Paragraph 20 of the Complaint, the District admits that the
14 decision of the hearing officer misstated and misapplied the law and the facts to the
15 law in those parts of her decision that found that the District denied a FAPE to
16 Student.
17

18 The District denies that the hearing officer misstated and misapplied the law
19 and the facts to the law in those parts of her decision that found that the District did
20 offer a FAPE to Student.
21

22 The District denies that equitable remedy works by operation of law.
23

24 The District denies that Plaintiff and Student are eligible for any remedy.
25

26 21. In answer to Paragraph 21 of the Complaint, the District incorporates its
27 answers to Plaintiff's Complaint contained in paragraphs 1 through 20 of this
28 answer.

22. In answer to Paragraph 22 of the Complaint, the District admits that the hearing officer misapplied the law and the facts to the law when she found that the District denied Student a FAPE.

The District admits that the hearing officer erred in finding that the District the District denied Student a FAPE during the 2005-2006 and 2006-2007 school years by failing to adequately communicate to Student's parents options for completing high school, that the District denied Student a FAPE in June 2007 by predetermining his placement, that Student was bullied, that District staff were insensitive, that a diploma track was appropriate for Student, and any other fact upon which a procedural or substantive violation of the IDEA was found by the hearing officer.

The District denies that the hearing officer misapplied the law and the facts to the law when she found that the District offered Student a FAPE.

The District alleges that this Court has no authority to "omit" any part of the hearing officer's decision.

The District denies that the hearing officer's Factual Findings number 57 *et seq.* are moot.

The District denies that the hearing officer made factual findings that were irrelevant to the issues to be determined at Student's due process hearing.

The District alleges that the hearing officer incorrectly found that the District denied Student a FAPE during the 2005-2006 and 2006-2007 school years by failing to adequately communicate to Student's parents options for completing high school,

1 that the District denied Student a FAPE in June 2007 by predetermining his
2 placement, that Student was bullied, that District staff were insensitive, that a
3 diploma track was appropriate for Student, and any other fact upon which a
4 procedural or substantive violation of the IDEA was found by the hearing officer.
5

6 23. In answer to Paragraph 23 of the Complaint, the District denies that
7 equitable remedy works by operation of law.
8

9 The District denies that any statements of the hearing officer's decision that
10 the District prevailed on any issue should be reversed.

11 The District denies that the hearing officer's order that an IEP team meeting is
12 to be convened to determine Student's placement is unlawful or should be reversed.
13

14 The District alleges that placement of Student in a diploma-track program
15 does not provide Student with a FAPE.
16

17 The District denies that Student is eligible for any remedy.

18 The District alleges that the hearing officer incorrectly found that that District
19 denied Student a FAPE during the 2005-2006 and 2006-2007 school years by failing
20 to adequately communicate to Student's parents options for completing high school,
21 that the District denied Student a FAPE in June 2007 by predetermining his
22 placement, that Student was bullied, that District staff were insensitive, that a
23 diploma track was appropriate for Student, and any other fact upon which a
24 procedural or substantive violation of the IDEA was found by the hearing officer.
25
26

27 The District alleges that the hearing officer incorrectly applied the law to find
28

that the District denied Student a FAPE in any way whatsoever.

24. In answer to Paragraph 24 of the Complaint, the District incorporates its answers to Plaintiff's Complaint contained in paragraphs 1 through 23 of this answer.

25. In answer to Paragraph 25 of the Complaint, the District denies that Plaintiff and Student should have prevailed in any way whatsoever at Student's due process hearing and that the hearing officer erred when she found that Student prevailed on any issue whatsoever.

The District denies that Plaintiff is eligible for any attorneys' fees or costs.

26. In answer to Plaintiff's Prayer for Relief, the District denies that Plaintiff should be granted any relief whatsoever, that Plaintiff should be granted attorney's fees, or that the District ever denied Student a FAPE.

II

AFFIRMATIVE DEFENSES

The District sets forth the following matters constituting affirmative defenses and avoidance (individually, "Affirmative Defense" or "affirmative defense") as follows:

First Affirmative Defense

27. As a further, separate and affirmative defense, the District alleges that its actions were undertaken in good faith and in the reasonable belief that each such

1 action was lawful and valid and, further, that it complied fully with the requirements
2 of the IDEA and applicable state and federal regulations and law.

3 **Second Affirmative Defense**

4 28. As a further, separate, and affirmative defense, the District alleges that
5 Plaintiff bears the burden of proving that the District denied him a FAPE, that the
6 District significantly impeded his parents' opportunity to participate in the
7 decisionmaking process regarding the provision to Student of a FAPE, and the
8 appropriate remedy.
9

10 **Third Affirmative Defense**

11 29. As a further, separate, and affirmative defense, the District alleges that
12 Plaintiff's Complaint is an admission.
13

14 **Fourth Affirmative Defense**

15 30. As a further, separate, and affirmative defense, the District alleges that
16 District did not significantly impede Student's parents' opportunity to participate in
17 the decisionmaking process regarding the provision to Student of a FAPE.
18

19 **Fifth Affirmative Defense**

20 31. As a separate and affirmative defense, the District alleges that the
21 Complaint and each purported cause of action set forth therein, fails to state a claim
22 against it upon which relief may be granted.
23
24
25
26
27
28

Sixth Affirmative Defense

32. As a further, separate and affirmative defense, the District alleges that the Hearing Officer's findings were thorough and careful except for those findings in her decision that support Student's allegations.

Seventh Affirmative Defense

33. As a further, separate and affirmative defense, the District alleges that the Hearing Officer's findings of fact are not clearly erroneous except for findings of fact that support Student's allegations.

Eighth Affirmative Defense

34. As a separate and affirmative defense, the District alleges that it has always offered to Petitioner a FAPE in the least restrictive environment that is and always has been reasonably calculated to provide Petitioner with educational benefit.

Ninth Affirmative Defense

35. As a separate and affirmative defense, the District alleges that placement at a nonpublic school would not provide a free appropriate public education to Student.

Tenth Affirmative Defense

36. As a separate and affirmative defense, the District alleges that placement at a nonpublic school is not placement in the least restrictive environment.

Eleventh Affirmative Defense

37. As a separate and affirmative defense, the District alleges that Student's

proposed placement does not meet state educational agency standards.

Twelfth Affirmative Defense

38. As a separate and affirmative defense, the District alleges that consideration of a nonpublic school placement is irrelevant because the District is ready, willing, and able to provide Student with a FAPE.

Thirteenth Affirmative Defense

39. As a further, separate and affirmative defense, the District alleges that Student's parents have refused educational services offered to them.

Fourteenth Affirmative Defense

40. As a further, separate, and affirmative defense, the District alleges that assessments of Petitioner have been appropriate.

Fifteenth Affirmative Defense

41. As a further, separate, and affirmative defense, the District alleges that independent educational evaluations of Student have not been appropriate.

Sixteenth Affirmative Defense

42. As a further, separate, and affirmative defense, the District alleges that Student's parents have consented to Student's IEPs.

Seventeenth Affirmative Defense

43. As a further, separate, and affirmative defense, the District alleges that Student's parents were provided with copies of Student's IEPs.

Eighteenth Affirmative Defense

44. As a further, separate, and affirmative defense, the District alleges that Student's parents were provided with copies of their procedural safeguards and rights under the IDEA.

Nineteenth Affirmative Defense

45. As a further, separate, and affirmative defense, the District alleges that Student's parents are estopped from asserting that the District denied Student a FAPE by failing to place him in a diploma-bound track.

Twentieth Affirmative Defense

46. As a further, separate, and affirmative defense, the District alleges that Student's parents refused to provide the District with relevant information.

Twenty-First Affirmative Defense

47. As a further, separate, and affirmative defense, the District alleges that Student's parents have unclean hands.

Twenty-Second Affirmative Defense

48. As a further, separate, and affirmative defense, the District alleges that Student abandoned issues at his due process hearing that were pled in his request for due process.

Twenty-Third Affirmative Defense

49. As a separate and affirmative defense, the District alleges that any failure to implement an agreed-to IEP was not material.

III

COUNTERCLAIMS

PROCEDURAL HISTORY

50. On or about September 4, 2007, Student, by and through his attorney, filed a Mediation and Due Process Request pursuant to 20 U.S.C. § 1415(b)(6), part of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* Student alleged that the District violated provisions of the IDEA, and named the District as the Respondent.

51. A special education due process hearing on the matter was held by the California Office of Administrative Hearings ("OAH") on October 16, 17, 18, and 19, 2007. The California Department of Education, a state educational agency within the definition of 20 U.S.C. § 1401(32), contracts with the OAH to conduct special education due process hearings pursuant to 20 U.S.C. § 1415(f).

52. A decision in Student's special education due process hearing ("Decision") was issued by the OAH Hearing Officer on November 20, 2007.

53. The District is an aggrieved party within the definition of 20 U.S.C. § 1415(i)(2)(A) to the factual findings, legal conclusions, decision, and order of the Hearing Officer in Student's special education due process hearing.

STATEMENT OF FACTS

54. On or about September 4, 2007, Student filed with the OAH a Request for Mediation and Due Process Hearing ("Complaint") pursuant to the IDEA. Student

1 named the District as Respondent and as a party to the action.

2 55. The OAH heard the matter on October 16, 17, 18, and 19, 2007, in a
3 special education due process hearing. The issues heard, as framed by the Hearing
4 Officer in the matter, were:
5

6 (a) Whether the District failed to offer and provide a FAPE to Student
7 during the 2005-2006 school year when Student was in the eleventh
8 grade in one or more of the following ways:
9

- 10 (i) Failure to provide parents with options for Student's graduation.
11 (ii) Failure to write any handwriting goals.
12 (iii) Failure to provide occupational therapy services for handwriting.
13 (iv) Failure to take appropriate action when Student's failed to make
14 progress to meet goals.
15 (v) Failure to provide a behavior support plan, and/or failure to write
16 adequate behavioral goals.
17
18

19 (b) Whether the District failed to offer and provide a FAPE to Student
20 during the 2006-2007 school year when Student was in the twelfth
21 grade in one or more of the following ways:
22

- 23 (i) Failure to write any handwriting goals.
24 (ii) Failure to provide social skills training.
25 (iii) Failure to provide occupational therapy services for handwriting.
26 (iv) Failure to timely provide communication logs.
27
28

- (v) Failure to timely provide a behavior support plan.
- (vi) Staff insensitivity to words and actions that trigger anxiety in Student.
- (vii) Staff insensitivity to parental concerns.
- (viii) Failure to provide any educational program (such as home hospital or itinerant teacher) after May 3, 2007.
- (ix) Failure to provide parents or Student with options for graduation, and/or predetermination of placement.
- (x) Failure to provide a safe learning environment.

56. In the Decision, the Hearing Officer concluded as to the issues:

- (a) The District denied Student a FAPE during the 2005-2006 and 2006-2007 school years by failing to provide parents with options for Student's graduation and predetermining Student's placement at a June 2007 IEP team meeting (issues (a)(i) and (b)(ix) of paragraph 55, *supra*). See Decision, "Conclusions of Law, p. 32, ¶¶ 10-12.
- (b) The District denied Student a FAPE during the 2005-2006 and 2006-2007 school years by failing to provide handwriting goals (issues (a)(ii) and (b)(i) of paragraph 55, *supra*). See Decision, "Conclusions of Law, pp. 32-33, ¶ 14.
- (c) The District provided Student with a FAPE for the 2005-2006 and 2006-2007 school years because Student did not require occupational

1 therapy services relating to handwriting (issues (a)(iii) and (b)(iii) of
2 paragraph 55, *supra*). See Decision, "Conclusions of Law, pp. 32-33, ¶
3 14.

4
5 (d) The District provided Student with a FAPE during the 2005-2006
6 school year because Student made sufficient progress on his IEP goals
7 (issue (a)(iv) of paragraph 55, *supra*). See Decision, "Conclusions of
8 Law, p. 33, ¶ 16.

9
10 (e) The District provided Student with a FAPE during the 2005-2006 and
11 2006-2007 school years because Student did not require a behavioral
12 support plan and the problem solving goal was sufficient to address
13 Student's behavioral issues during the 2005-2006 school year, The
14 District timely provided Student with a behavioral support plan during
15 the 2006-2007 school year, and the District took action to correct any
16 reported problems with peers or aides (issues (a)(v), (b)(v), and (b)(x) of
17 paragraph 55, *supra*). See Decision, "Conclusions of Law, p. 34, ¶¶ 18-
18 19.

19
20
21
22 (f) The District provided Student with a FAPE during the 2006-2007
23 school year because the District provided Student with social skills
24 training (issue (b)(ii) of paragraph 55, *supra*). See Decision,
25 "Conclusions of Law, p. 34, ¶ 20.

26
27 (g) The District provided Student with a FAPE during the 2006-2007
28

1 school year because the District provided Student's parents with timely
2 communication logs (issue (b)(iv) of paragraph 55, *supra*). See
3 Decision, "Conclusions of Law, p. 34, ¶ 21.

4
5 (h) The District provided Student with a FAPE during the 2006-2007
6 school year because any possible insensitivity by District staff toward
7 Student or his parents was not severe or prevented the parents from
8 participating in the process or constituted a failure to follow Student's
9 IEP (issues (b)(vi) and (b)(vii) of paragraph 55, *supra*). See Decision,
10 "Conclusions of Law, pp 34-35, ¶ 22.

11
12
13 (i) The District provided Student with a FAPE during the 2006-2007
14 school year because it offered Student an appropriate educational
15 placement from May 3, 2007, through the end of the 2006-2007 school
16 year (issue (b)(viii) of paragraph 55, *supra*). See Decision,
17 "Conclusions of Law, p. 35, ¶ 24.

18
19 57. The Hearing Officer ordered that Student is entitled to:

20
21 (a) Have the District convene a new IEP team meeting to discuss and
22 consider placements, goals, and services designed to help Student work
23 toward a high school diploma.

24
25 (b) Prevailing party status as to the following issues:

26 (i) Whether the District denied Student a FAPE during the 2005-
27 2006 school year by failing to provide parents with options for
28

Student's graduation.

(ii) Whether the District denied Student a FAPE during the 2005-2006 school year by failing to provide any handwriting goals.

(iii) Whether the District denied Student a FAPE during the 2006-2007 school year by failing to provide parents or Student with options for graduation and/or predetermination of placement.

58. The Decision is final and not subject to reconsideration or further administrative appeal. The District is aggrieved by the Decision to the extent that the factual findings of the Hearing Officer are contrary to the preponderance of the evidence, the legal conclusions of the Hearing Officer are contrary to law, the Hearing Officer determined that the District did not prevail on all issues to be heard at the hearing, and the Hearing Officer ordered that Student is entitled to relief.

CLAIM FOR RELIEF

59. The District provided Student with a handwriting goal during the 2005-2006 and 2006-2007 school years and provided appropriate instruction on improving his handwriting during those same school years.

60. The District provided parents with options for Student's graduation/options for completing high school during the 2005-2006 and 2006-2007 school years and did not predetermine Petitioner's placement.

61. The Decision of the Hearing Officer on the Issues listed in the paragraph subsections numbered (a)(i), (a)(ii), (b)(i), and (b)(ix) of paragraph 55, *supra*, is not

supported by a preponderance of the evidence and is contrary to law.

62. The actions of the Hearing Officer, acting on behalf of the OAH, constitute reversible error because the Decision on the Issues listed in (a)(i), (a)(ii), (b)(i), and (b)(ix) of paragraph 55 was not based on the evidence presented at Student's special education due process hearing and is contrary to law.

PRAAYER

WHEREFORE, WITH RESPECT TO PLAINTIFF'S COMPLAINT, the District prays for an order of this Court declaring and adjudging as follows:

63. That each of Plaintiff's claims for relief be denied as a matter of fact and law.

64. That each of the District's Affirmative Defenses is a complete defense to each of Plaintiff's claims for relief.

65. That Plaintiff takes nothing by virtue of her Complaint on file herein;

66. That the District recovers its costs of suit incurred herein.

67. That Plaintiff be ordered to pay reasonable attorneys fees incurred by the District, according to proof, in such amount as the court deems just and proper.

68. That the District be awarded such other and further relief as the court deems just and proper.

WHEREFORE, WITH RESPECT TO THE DISTRICT'S COUNTERCLAIMS, the District prays for judgment as follows:

69. That those portions of the Decision finding that the District failed to

1 provide parents with options for Student's graduation during the 2005-2006 and
2 2006-2007 school years, failed to discuss options/predetermined placement at a June
3 2007 IEP team meeting, and failed to provide handwriting goals during the 2005-
4 2006 and 2006-2007 school years be set aside and/or overturned.

5
6 70. That the portion of the Decision that ordered that the District shall
7 convene a new IEP team meeting to discuss and consider placements, goals, and
8 services designed to help Student work toward a high school diploma be set aside
9 and/or overturned.

10
11 71. That the portion of the Decision that found that Student was a prevailing
12 party on issues numbered (a)(i), (a)(ii), and (b)(ix) of paragraph 55, *supra*, heard at
13 the special education due process hearing, be set aside and/or overturned.

14
15 72. That the District was the prevailing party on the issue numbered (b)(i) of
16 paragraph 55, *supra*.

17
18 73. For a declaratory judgment that under the IDEA, the District
19 consistently offered Student a FAPE.

20
21 74. For a declaratory judgment otherwise affirming the remainder of the
22 Decision of the Hearing Officer with regard to the issues on which the District
23 prevailed.

24
25 ///

26 ///

27 ///

1 75. For the District's costs of suit, disbursements, and reasonable attorneys'
2 fees.

3 76. For such other relief as this Court deems just and proper.

4
5 Dated: January 8, 2008

Respectfully Submitted,

6 FILARSKY & WATT LLP

7
8 By: 

9 SHARON A. WATT

10 Attorney for Defendant and Counterclaimant
11 FALLBROOK UNION HIGH SCHOOL
12 DISTRICT
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PROOF OF SERVICE

I am employed in the County of Ventura, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 408 Bryant Circle, Suite C, Ojai, California 93023.

On the date noted below, I served the foregoing document described as: FALLBROOK UNION HIGH SCHOOL DISTRICT ANSWER TO COMPLAINT/APPEAL OF ADMINISTRATIVE HEARINGS, SPECIAL EDUCATION DIVISION, FOR PARTIAL REVERSAL OF DECISION AND ATTORNEY FEES AND COSTS AND COUNTERCLAIMS AGAINST MARY STRUBLE on the interested parties in this action as follows:

Name & Address	Fax No.	Email Address
Ellen Dowd, Esq. Attorney at Law 2658 Del Mar Heights Road #228 Del Mar, CA 92014	(858) 755-6348	

☒ U.S. MAIL: I caused said envelope to be placed for collection and mailing in the United States mail, postage prepaid, on the same day in the ordinary course of business at Ojai, California.

☒ FACSIMILE TRANSMISSION: I caused a true and complete copy of this document to be transmitted to the parties listed herein at their respective most recent fax numbers of record in this action.

☐ ELECTRONIC EMAIL TRANSMISSION: I caused a true and complete copy of this document to be email transmitted to the parties listed herein at their respective most recent email addresses of record in this action.

☐ FEDERAL EXPRESS: I caused said envelope to be placed for collection at a Federal Express drop box, on the same day in the ordinary course of business at Ojai, California.

☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ FEDERAL: I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 8, 2008, at Ojai, California.


Cheryl L. Smith

Broadcast Report

Date/Time 01-08-2008 11:24:03 a.m. Transmit Header Text
 Local ID 1 805 640 2980 Local Name 1 FILARSKY & WATT
 Local ID 2 Local Name 2

This document : Confirmed
 (reduced sample and details below)
 Document size : 8.5"x11"

MIRANDA A. WATT
 STEVE A. FILARSKY

FILARSKY & WATT LLP
 ATTORNEYS AT LAW
 408 Bryant Circle, Suite C
 Ojai, California 93023
 Telephone: (805) 640-2970
 Facsimile: (805) 640-2980

Manhattan Beach Office
 1441 Ninth Street, Suite
 Manhattan Beach, CA 90266
 Telephone: (310) 945-7828
 Facsimile: (310) 945-2999

FAX TRANSMISSION

TO: Ellen Dowd, Esq. (858) 755-6348
 COPY TO: Sallie Hunt, FUHSD (760) 723-1795
 FROM: Cheryl Smith, Legal Administrator
 DATE: January 8, 2008
 PAGES: 28 (including transmittal sheet)
 RE: *Mary Struble, as Conservator for C.S. v. Fallbrook Union High School District*
 USDC Case No. CASE NO. 07CV 2328 LAB (cab)
 ATTACHED: FALLBROOK UNION HIGH SCHOOL DISTRICT ANSWER TO
 COMPLAINT/APPEAL OF ADMINISTRATIVE HEARINGS, SPECIAL
 EDUCATION DIVISION, FOR PARTIAL REVERSAL OF DECISION AND
 ATTORNEY FEES AND COSTS AND COUNTERCLAIMS AGAINST MARY
 STRUBLE

Important:

The information contained in this facsimile message is intended only for the personal and confidential use of the designated recipient(s) named above. This message may be an attorney-client communication, and as such, is privileged and confidential. If the reader of this message is not the intended recipient(s) or an agent responsible for delivering it to the intended recipient(s), you are hereby notified that you have received this document in error, and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify the sender or this office immediately by telephone and return the original message to us by mail.

Total Pages Scanned : 28

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001	877	917607231795	10:51:41 a.m. 01-08-2008	00:14:37	28/28	1	EC	HS	CP14400
002	877	8587556348	10:51:41 a.m. 01-08-2008	00:16:00	28/28	1	EC	HS	CP12000

Abbreviations:

HS: Host send
 HR: Host receive
 WS: Waiting send

PL: Polled local
 PR: Polled remote
 MS: Mailbox save

MP: Mailbox print
 CP: Completed
 FA: Fall

TU: Terminated by user
 TS: Terminated by system
 RP: Report

G3: Group 3
 EC: Error Correct

JUNES

ATTORNEY SERVICE

DOWNTOWN
 3776 FOURTH AVENUE • SAN DIEGO, CA 92103
 (619) 233-6119 • Fax (619) 231-0647

WORK ORDER NUMBER

PR 242743

* 7 pages total *

ASSIGNED TO:

PROCESS INSTRUCTIONS

DATE 1/8/08	<input type="checkbox"/> DO TODAY <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> RUSH (24-48 HRS)	YOUR JONES CUSTOMER CODE #	PERSON OR ENTITY TO SERVE (INDICATE NAME EXACTLY AS IT IS TO APPEAR ON PROOF OF SERVICE)
LAW FIRM (NAME & ADDRESS) BAR CODE # Diego John Velasquez 1129 Third Ave., Suite 3 Chula Vista, CA 91911			Graciela L. Lopez, D.D.S.
ATTORNEY'S CLIENT NUMBER 4279068	ATTENTION John	PHONE NUMBER (619) 422-2564 FAX NUMBER (619) 422-1673	DOCUMENTS (LIST EXACTLY AS IT APPEARS ON PROOF OF SERVICE) <input checked="" type="checkbox"/> S&C <input type="checkbox"/> S&P <input type="checkbox"/> S&C/VUD <input type="checkbox"/> SUB <input type="checkbox"/> STD/ED <input type="checkbox"/> COP <input type="checkbox"/> ORAP <input type="checkbox"/> OSC OTHER Notice of Case Assignment.
CASE NAME: PLT/PET Deborah Ann Sanchez VS DEFT/RES Graciela L. Lopez, D.D.S.; Lopez and Noyes, Dental Corp; and Does.			WITNESS FEES ATTACHED \$ ORIGINALS ATTACHED? YES <input type="checkbox"/> NO <input type="checkbox"/>

CASE NUMBER 68029-CU-mm-SC	COURT Superior Court	JUDICIAL DISTRICT South County	HEARING DATE	TIME	AM <input type="checkbox"/> PM <input type="checkbox"/>	DEPT			
HOME ADDRESS			BUSINESS ADDRESS						
STREET			BUSINESS NAME Lopez and Noyes Dental Corp						
APT.			STREET 374 H Street, Suite 101						
CITY, STATE, ZIP			CITY, STATE, ZIP Chula Vista, CA 91910						
PHONE			PHONE (619) 691-8917 WORK HOURS						
LAST DAY TO SERVE 2/4/08	FAST TRACK DATE	SEX	AGE	RACE	HEIGHT	WEIGHT	HAIR	EYES	SPECIAL FEATURES
STATUS DUE BY	JONES STATUS DATE	SEX	AGE	RACE	HEIGHT	WEIGHT	HAIR	EYES	SPECIAL FEATURES

SPECIAL INSTRUCTIONS

LIMITS OF LIABILITIES \$100.00 PER DELIVERY.

PLEASE CALL WHEN COMPLETE? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			DIRECT INSURANCE BILLING INFORMATION				OFFICE USE			
TELEPHONE LOG			CARRIER NAME				PRSP PRSU			
DATE			ADDRESS				PAS SSU			
CONTACT			CITY, STATE, ZIP				PRSPD PSAL			
RESPONSE			ADJUSTER				PSA SSAL			
			INSURED				SS BAD			
			CLAIM NUMBER				SSA SSD			
			DATE OF LOSS				NP BFO			
							NPT ADD			
							B DAO			
							RT RO			
							ATEL ATO			
							BA			
							LOC			
							ML			
							POSTAGE			
							OTHER			
PERSONAL SERVICE <input type="checkbox"/>			SUB SERVICE BY LEAVING WITH <input type="checkbox"/>				RELATIONSHIP			
DATE SERVED			PROCESS SERVER				REGISTRATION NO			
AM PM			DATE MAILED				DAYS TO COMPLETE			

THIS FORM FOR SERVICE OF PROCESS ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 500 Third Avenue
MAILING ADDRESS: 500 Third Avenue
CITY AND ZIP CODE: Chula Vista, CA 91910-5849
BRANCH NAME: South County
TELEPHONE NUMBER: (619) 691-4400

PLAINTIFF(S) / PETITIONER(S): Deborah Ann Sanchez

DEFENDANT(S) / RESPONDENT(S): Graciela L. Lopez, D.D.S. et.al.

SANCHEZ VS. LOPEZ, D.D.S.

NOTICE OF CASE ASSIGNMENT

CASE NUMBER:

37-2008-00068029-CU-MM-SC

Judge: William S. Cannon

Department: S-04

COMPLAINT/PETITION FILED: 01/04/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

(CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

Graciela L. Lopez, D.D.S.; Lopez and Noyes, Dental Corp.; and Does 1 thru 50, Inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Deborah Ann Sanchez

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SAN DIEGO SUPERIOR COURT

JAN 04 2008

CLERK OF THE SUPERIOR COURT
BY V. CARRILLO

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California
500 Third Avenue

-Same-

Chula Vista, Ca. 91910

South County Division

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Diego John Velasquez, Esq., SBN176961

(619) 422-2564 (619) 422-1673

Law Offices of Diego John Velasquez

1129 Third Avenue, Ste. 3

Chula Vista, Ca. 91911

DATE: **JAN 4 2008**

(Fecha)

Clerk, by

V. CARRILLO

Deputy

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ on behalf of (specify):

under: CCP 416.10 (corporation)

CCP 416.60 (minor)

CCP 416.20 (defunct corporation)

CCP 416.70 (conservatee)

CCP 416.40 (association or partnership)

CCP 416.90 (authorized person)

other (specify):

- ☐ by personal delivery on (date):

Page 1 of 1

1 Diego John Velasquez, Esq.
2 Bar #176961
3 Law Offices of Diego John Velasquez
4 1129 Third Avenue, Suite 3
5 Chula Vista, Ca. 91911

6 Attorney for Plaintiff
7 DEBORAH ANN SANCHEZ

FILED
SAN DIEGO SUPERIOR COURT

JAN 04 2008

CLERK OF THE SUPERIOR COURT
BY V. CARRILLO

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
9 SOUTH COUNTY DIVISION

10 DEBORAH ANN SANCHEZ)	Case No. 37-2008-00068029-CU-MM-SC
11 Plaintiff,)	COMPLAINT FOR:
12 v.)	1. DENTAL MALPRACTICE
13 GRACIELA L. LOPEZ, D.D.S.; LOPEZ)	2. INTENTIONAL MISREPRESENTATION
14 and NOYES, DENTAL CORP.; and)	
15 DOES 1 through 50, inclusive,)	
16 Defendants.)	

17 Plaintiff Deborah Ann Sanchez alleges as follows:

18 **GENERAL ALLEGATIONS**

- 19 1. At all material times, Plaintiff Deborah Ann Sanchez (hereinafter "Plaintiff") was a
20 resident of the County of San Diego, state of California.
- 21 2. Plaintiff is informed and believes that, at all times relevant hereto, Defendant Graciela L.
22 Lopez, D.D.S. (hereinafter "Dr. Lopez") was a resident of the County of San Diego, state of
23 California.
- 24 3. At all material times, Dr. Lopez was a dentist licensed under the laws of the state of
25 California and employed as a dentist by co-Defendant Lopez and Noyes, Dental Corp. ("Dental
26 Corp.").
- 27 4. Plaintiff is informed and believes that, at all times relevant hereto, Defendant Dental Corp.

1 was a professional dental corporation licensed under the laws of the state of California with its
2 principal place of business in the County of San Diego, state of California.

3 5. The true names and capacities of the defendants named herein as Does 1 through 50,
4 inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who
5 therefore sues such defendants by fictitious names pursuant to Cal. Code Civ. Proc. §474. Plaintiff
6 is informed and believes that Doe defendants are California residents. Plaintiff will amend this
7 Complaint to show such true names and capacities when they have been determined.

8 6. Plaintiff is informed and believes that at all times herein mentioned, each of the Defendant
9 was the agent and employee of the remaining co-defendants, and as such was acting within the time,
10 place, purpose, and scope of said employment and agency and each Defendant has ratified,
11 authorized, and approved the acts of their agents.

12 7. At all times mentioned herein Defendants held themselves out as possessing the degree of
13 skill and competence common to dental practitioners in the community.

14 8. On July 13, 2006 Plaintiff consulted with Defendants to obtain a dental diagnosis and
15 receive treatment.

16 9. Beginning July 13, 2006 and continuing thereafter to June 14, 2007, Defendants provided
17 Plaintiff with dental diagnosis, ongoing dental treatment, and arranged for further dental care.

18 10. All Defendants diagnosed and treated Plaintiff, but did so negligently and carelessly.

19 11. After her examination and diagnosis Dr. Lopez misinformed Plaintiff that she had a
20 completed root canal and therefore was a candidate for a crown.

21 12. All Defendants mistreated Plaintiff's dental condition exposing her to unnecessary pain,
22 discomfort, mental anguish, and physical injury.

23 13. As a result of the dental care and treatment Plaintiff received from Defendants, she
24 suffered severe physical and mental harm. In addition, she has suffered both past and future dental
25 expenses in an amount to be proven at the time of trial.

26 14. Plaintiff has timely complied with the notice requirements of California Code of Civil
27 Procedure section 364 regarding the notice of intent to commence action against health care
28

1 provider.

2 15. On June 29, 2007, Plaintiff caused to be mailed to Dr. Lopez a notice of her intention to
3 commence an action based upon negligence by health care provider.

4 16. On June 29, 2007, Plaintiff caused to be mailed to Dental Corp. a notice of her intention
5 to commence an action based upon negligence by health care provider.

6 **FIRST CAUSE OF ACTION**

7 **(Dental Negligence Against All Defendants)**

8 17. The allegations set forth in Paragraphs 1 through 16 are realleged and incorporated
9 herein by reference.

10 18. At all times mentioned herein, Defendants' diagnosis and treatment of Plaintiff was
11 below the degree of skill and competence required by dental practitioners in the community.

12 19. Defendants' negligence was a substantial factor in causing harm to Plaintiff.

13 20. As a direct legal and proximate result of Defendants' conduct, Plaintiff has sustained
14 general and special damages in an amount according to proof at the time of trial.

15 **SECOND CAUSE OF ACTION**

16 **(Intentional Misrepresentation Against All Defendants)**

17 21. The allegations set forth in Paragraphs 1 through 16 are realleged and incorporated
18 herein by reference.

19 22. Dr. Lopez made an intentional false representation that harmed Plaintiff.

20 23. In particular, Defendant intentionally misrepresented to Plaintiff that she had a
21 completed root canal and that she was a candidate for a crown.

22 24. Defendant's representations were false.

23 25. Defendant knew that the representations were false when made.

24 26. Defendant made the representations recklessly and without regard for their truth.

25 27. Defendant intended that Plaintiff rely on the representations.

26 28. Plaintiff reasonably relied on Defendant's representations and suffered damages.

27 29. As a direct legal and proximate result of Defendant conduct, Plaintiff has sustained
28

1 general and special damages in an amount according to proof at the time of trial.

2 30. Defendants' conduct was despicable and was carried on by Defendants in conscious
3 disregard for Plaintiff's rights. Defendants' conduct constitutes malice, oppression, or fraud, such
4 that Plaintiff is entitled under California Civil Code §3294 to punitive damages in an amount
5 sufficient to punish or set an example of Defendants.

6 PRAYER FOR RELIEF

7 WHEREFORE, Plaintiff requests relief as follows:

8 As to the First Cause of Action:

- 9 1. For special and general damages;
10 2. For an award of interest, including prejudgment interest, at the legal rate;
11 3. For costs of the suit and such other relief as the Court may deem proper.

12 As to the Second Cause of Action:

- 13 1. For special and general damages;
14 2. For punitive damages according to proof;
15 3. For an award of interest, including prejudgment interest, at the legal rate;
16 4. For costs of the suit and such other relief as the Court may deem proper.

17
18
19 DATE: 1/4/08

LAW OFFICES OF DIEGO JOHN VELASQUEZ

20
21 By: Diego John Velasquez
22 Diego John Velasquez, Attorneys for Plaintiff
23 Deborah Ann Sanchez
24
25
26
27
28

JUNES

ATTORNEY SERVICE

DOWNTOWN
3776 FOURTH AVENUE • SAN DIEGO, CA 92103
(619) 233-6119 • Fax (619) 231-0647

WORK ORDER NUMBER

PR 242744

* 7 pages total *

ASSIGNED TO:

PROCESS INSTRUCTIONS

DATE 1/8/08	<input type="checkbox"/> DO TODAY <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> RUSH (24-48 HRS)	YOUR JONES CUSTOMER CODE	PERSON OR ENTITY TO SERVE (INDICATE NAME EXACTLY AS IT IS TO APPEAR ON PROOF OF SERVICE)
LAW FIRM (NAME & ADDRESS) BAR CODE # Diego John Velasquez 1129 Third Ave., Suite 3 Chula Vista, CA 91911		Lopez and Noyes Dental Corp. Agent: Angelina Noyes	
ATTORNEY'S CLIENT NUMBER 4279068	ATTENTION	PHONE NUMBER (619) 422-2564 FAX NUMBER (619) 422-1673	DOCUMENTS (LIST EXACTLY AS IT APPEARS ON PROOF OF SERVICE) <input checked="" type="checkbox"/> S&C <input type="checkbox"/> S&P <input type="checkbox"/> S&GUD <input type="checkbox"/> SUR <input type="checkbox"/> STD/HU <input type="checkbox"/> COP <input type="checkbox"/> ORAP <input type="checkbox"/> OSC OTHER
CASE NAME PLT/PET Deborah Ann Sanchez VS DEFT/RES Graciele L. Lopez, D.D.S., Lopez and Noyes, Dental Corp., and Docs.		Notice of case assignment.	
WITNESS FEES ATTACHED \$		ORIGINALS ATTACHED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

CASE NUMBER 68029-CU-MM-SC	COURT	JUDICIAL DISTRICT	HEARING DATE	TIME	AM <input type="checkbox"/> PM <input type="checkbox"/>	DEPT
HOME ADDRESS			BUSINESS ADDRESS			
STREET			BUSINESS NAME Lopez and Noyes, Dental Corp.			
APT. #			STREET 669 Forester Ln.			
CITY, STATE, ZIP			CITY, STATE, ZIP Bonita, CA 91902			
PHONE			PHONE			
LAST DAY TO SERVE 2/4/08			WORK HOURS			
FAST TRACK DATE			SPECIAL FEATURES			
STATUS DUE BY			SPECIAL FEATURES			
JUNES STATUS DATE			SPECIAL FEATURES			
SEX			SEX			
AGE			AGE			
RACE			RACE			
HEIGHT			HEIGHT			
WEIGHT			WEIGHT			
HAIR			HAIR			
EYES			EYES			
SPECIAL FEATURES			SPECIAL FEATURES			

SPECIAL INSTRUCTIONS LIMITS OF LIABILITIES \$100.00 PER DELIVERY.

PLEASE CALL WHEN COMPLETE? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			DIRECT INSURANCE BILLING INFORMATION				OFFICE USE	
TELEPHONE LOG			CARRIER NAME				RRSP PRSU	
DATE			ADDRESS				PRSP SSU	
CONTACT			CITY, STATE, ZIP				PRSPD PSAU	
RESPONSE			ADJUSTER				PSA SSAD	
			INSURED				SS BAD	
			CLAIM NUMBER				SSA SSO	
			DATE OF LOSS				NP DFO	
							NPT ADO	
							R BAQ	
							RT RO	
							ATT ATO	
							SA	
							LOC	
							MI	
							POSTAGE	
							OTHER	
PERSONAL SERVICE			SUB SERVICE BY LEAVING WITH				RELATIONSHIP	
DATE SERVED			AM PM				PROCESS SERVED	
							REGISTRATION NO.	
							DATE MAILED	
							DAYS TO COMPLETE	

THIS FORM FOR SERVICE OF PROCESS ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 500 Third Avenue

MAILING ADDRESS: 500 Third Avenue

CITY AND ZIP CODE: Chula Vista, CA 91910-5649

BRANCH NAME: South County

TELEPHONE NUMBER: (619) 691-4400

PLAINTIFF(S) / PETITIONER(S): Deborah Ann Sanchez

DEFENDANT(S) / RESPONDENT(S): Graciela L Lopez, D.D.S. et.al.

SANCHEZ VS. LOPEZ, D.D.S.

NOTICE OF CASE ASSIGNMENT

CASE NUMBER:

37-2008-00068029-CU-MM-SC

Judge: William S. Cannon

Department: S-04

COMPLAINT/PETITION FILED: 01/04/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

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DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

(CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

Graciela L. Lopez, D.D.S.; Lopez and Noyes, Dental Corp.; and Does 1 thru 50, Inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Deborah Ann Sanchez

FILED
SAN DIEGO SUPERIOR COURT

JAN 04 2008

CLERK OF THE SUPERIOR COURT
BY V. CARRILLO

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California
 500 Third Avenue

-Same-

Chula Vista, Ca. 91910

South County Division

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Diego John Velasquez, Esq., SBN176961

(619) 422-2564 (619) 422-1673

Law Offices of Diego John Velasquez

1129 Third Avenue, Ste. 3

Chula Vista, Ca. 91911

DATE:

JAN 4 2008

(Fecha)

Clerk, by

V. CARRILLO

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. ☐ by personal delivery on (date):

(SEAL)

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1 Diego John Velasquez, Esq.
2 Bar #176961
3 Law Offices of Diego John Velasquez
4 1129 Third Avenue, Suite 3
5 Chula Vista, Ca. 91911

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8 Attorney for Plaintiff
9 DEBORAH ANN SANCHEZ

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
SOUTH COUNTY DIVISION

DEBORAH ANN SANCHEZ

Plaintiff,

v.

GRACIELA L. LOPEZ, D.D.S.; LOPEZ
and NOYES, DENTAL CORP.; and
DOES 1 through 50, inclusive,

Defendants.

Case No.

37-2008-00068029-CU-MM-SC

COMPLAINT FOR:

1. DENTAL MALPRACTICE
2. INTENTIONAL MISREPRESENTATION

Plaintiff Deborah Ann Sanchez alleges as follows:

GENERAL ALLEGATIONS

1. At all material times, Plaintiff Deborah Ann Sanchez (hereinafter "Plaintiff") was a resident of the County of San Diego, state of California.
2. Plaintiff is informed and believes that, at all times relevant hereto, Defendant Graciela L. Lopez, D.D.S. (hereinafter "Dr. Lopez") was a resident of the County of San Diego, state of California.
3. At all material times, Dr. Lopez was a dentist licensed under the laws of the state of California and employed as a dentist by co-Defendant Lopez and Noyes, Dental Corp. ("Dental Corp.").
4. Plaintiff is informed and believes that, at all times relevant hereto, Defendant Dental Corp.

1 was a professional dental corporation licensed under the laws of the state of California with its
2 principal place of business in the County of San Diego, state of California.

3 5. The true names and capacities of the defendants named herein as Does 1 through 50,
4 inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who
5 therefore sues such defendants by fictitious names pursuant to Cal. Code Civ. Proc. §474. Plaintiff
6 is informed and believes that Doe defendants are California residents. Plaintiff will amend this
7 Complaint to show such true names and capacities when they have been determined.

8 6. Plaintiff is informed and believes that at all times herein mentioned, each of the Defendant
9 was the agent and employee of the remaining co-defendants, and as such was acting within the time,
10 place, purpose, and scope of said employment and agency and each Defendant has ratified,
11 authorized, and approved the acts of their agents.

12 7. At all times mentioned herein Defendants held themselves out as possessing the degree of
13 skill and competence common to dental practitioners in the community.

14 8. On July 13, 2006 Plaintiff consulted with Defendants to obtain a dental diagnosis and
15 receive treatment.

16 9. Beginning July 13, 2006 and continuing thereafter to June 14, 2007, Defendants provided
17 Plaintiff with dental diagnosis, ongoing dental treatment, and arranged for further dental care.

18 10. All Defendants diagnosed and treated Plaintiff, but did so negligently and carelessly.

19 11. After her examination and diagnosis Dr. Lopez misinformed Plaintiff that she had a
20 completed root canal and therefore was a candidate for a crown.

21 12. All Defendants mistreated Plaintiff's dental condition exposing her to unnecessary pain,
22 discomfort, mental anguish, and physical injury.

23 13. As a result of the dental care and treatment Plaintiff received from Defendants, she
24 suffered severe physical and mental harm. In addition, she has suffered both past and future dental
25 expenses in an amount to be proven at the time of trial.

26 14. Plaintiff has timely complied with the notice requirements of California Code of Civil
27 Procedure section 364 regarding the notice of intent to commence action against health care
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1 provider.

2 15. On June 29, 2007, Plaintiff caused to be mailed to Dr. Lopez a notice of her intention to
3 commence an action based upon negligence by health care provider.

4 16. On June 29, 2007, Plaintiff caused to be mailed to Dental Corp. a notice of her intention
5 to commence an action based upon negligence by health care provider.

6 **FIRST CAUSE OF ACTION**

7 **(Dental Negligence Against All Defendants)**

8 17. The allegations set forth in Paragraphs 1 through 16 are realleged and incorporated
9 herein by reference.

10 18. At all times mentioned herein, Defendants' diagnosis and treatment of Plaintiff was
11 below the degree of skill and competence required by dental practitioners in the community.

12 19. Defendants' negligence was a substantial factor in causing harm to Plaintiff.

13 20. As a direct legal and proximate result of Defendants' conduct, Plaintiff has sustained
14 general and special damages in an amount according to proof at the time of trial.

15 **SECOND CAUSE OF ACTION**

16 **(Intentional Misrepresentation Against All Defendants)**

17 21. The allegations set forth in Paragraphs 1 through 16 are realleged and incorporated
18 herein by reference.

19 22. Dr. Lopez made an intentional false representation that harmed Plaintiff.

20 23. In particular, Defendant intentionally misrepresented to Plaintiff that she had a
21 completed root canal and that she was a candidate for a crown.

22 24. Defendant's representations were false.

23 25. Defendant knew that the representations were false when made.

24 26. Defendant made the representations recklessly and without regard for their truth.

25 27. Defendant intended that Plaintiff rely on the representations.

26 28. Plaintiff reasonably relied on Defendant's representations and suffered damages.

27 29. As a direct legal and proximate result of Defendant conduct, Plaintiff has sustained
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1 general and special damages in an amount according to proof at the time of trial.

2 30. Defendants' conduct was despicable and was carried on by Defendants in conscious
3 disregard for Plaintiff's rights. Defendants' conduct constitutes malice, oppression, or fraud, such
4 that Plaintiff is entitled under California Civil Code §3294 to punitive damages in an amount
5 sufficient to punish or set an example of Defendants.

6 PRAYER FOR RELIEF

7 WHEREFORE, Plaintiff requests relief as follows:

8 As to the First Cause of Action:

- 9 1. For special and general damages;
10 2. For an award of interest, including prejudgment interest, at the legal rate;
11 3. For costs of the suit and such other relief as the Court may deem proper.

12 As to the Second Cause of Action:

- 13 1. For special and general damages;
14 2. For punitive damages according to proof;
15 3. For an award of interest, including prejudgment interest, at the legal rate;
16 4. For costs of the suit and such other relief as the Court may deem proper.

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18
19 DATE: 1/4/08

LAW OFFICES OF DIEGO JOHN VELASQUEZ

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21 By: Diego John Velasquez
22 Diego John Velasquez, Attorneys for Plaintiff
23 Deborah Ann Sanchez
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